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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 135091-1/YOD (GERD:0111)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on June 19, 2006

Signature: Lynda Howell

Typed or printed name: Lynda Howell

Application Number	Filed
10/814,722	March 31, 2004

First Named Inventor: David Joseph Najewicz

Art Unit	Examiner
3749	Josiah C. Cocks

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [X] attorney or agent of record. Registration number 37,479
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

PQ
Signature

Patrick S. Yoder
Typed or printed name

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Telephone number

June 19, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[X] *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: David Joseph Najewicz et al.	§	
	§	Group Art Unit: 3749
Serial No.: 10/814,722	§	
	§	Examiner: Josiah C. Cocks
Filed: March 31, 2004	§	
	§	
For: ENHANCED BURNER PERFORMANCE GAS RANGE SYSTEM AND METHOD	§	Atty. Docket: 135091-1/YOD GERD:0111
	§	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING
37 C.F.R. 1.8

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June 19, 2006 — Lynda Howell
Date — Lynda Howell

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In respect to the Final Office Action of April 21, 2006, Appellants respectfully submit this Pre-Appeal Brief Request for Review. This Request is being filed concurrently with a Notice of Appeal.

In the Final Office Action mailed on April 21, 2006, the Examiner essentially reiterated the rejection formulated in the previous non-final Office Action. Because the Appellants believe that the rejections are improper, the present Appeal has been filed.

The Examiner rejected all of pending claims 1-39 under 35 U.S.C. §103(a). Of these, claims 1, 11, 22, 29 and 34 are independent.

Rejections Under 35 U.S.C. § 103(a)

Claims 1-4, 6-9, 11-14, 16-20 and 22-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rothenberger et al. (U.S. Patent No. 6,287,108; hereinafter "Rothenberger") in view of Adams et al. (U.S. Patent No. 6,178,997; hereinafter "Adams"). Claims 5 and 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rothenberger in view of Adams and further in view of Smith (U.S. Patent No. 5,795,998; hereinafter "Smith"). Claims 10 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rothenberger in view of Adams and further in view of Schaupert (U.S. Patent No. 5,024,209; hereinafter "Schaupert"). Rejected claims 1, 11, 22, 29 and 34 are independent and will be discussed in detail below.

Appellants submit that independent claims 1, 11, 22, 29 and 34 recite, in generally similar language, the gas range system *including gas fuel boost pump disposed downstream of the pressure regulator* and configured to *increase pressure* of a gas flow received from the gas feed line.

In the Final Office Action, the Examiner argued that Rothenberger discloses a method of enhancing burner performance in a gas range system that includes a pressure regulator in the form of actuating device with valve to regulate gas flow through a gas feed line. The Examiner acknowledged that Rothenberger does not disclose the use of gas fuel boost pump. However, the Examiner relied upon Adams to teach a variable speed pump for regulation of fluid flow to a gas burner.

Furthermore, the Examiner argued that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the valve of Rothenberger to incorporate the variable speed pump taught by Adams for the purpose of controlling the amount of fluid distribution. *See,* Office Action, page 5.

Neither of the references teaches gas fuel boost pump disposed downstream of the pressure regulator.

Rothenberger discloses an actuating device for *varying the gas flow* through a gas feed line as a function of the controlled variable supplied by closing or opening the gas valve accordingly. *See*, Rothenberger, col. 6, lines 55-63. Further, Adams teaches a control element such as a valve, or a variable speed drive or a pump. Neither of the references teaches a *gas fuel boost pump disposed downstream of the pressure regulator* to boost the pressure of the gas flow. Moreover, the replacement proposed by the Examiner *would not result* in such an arrangement.

The Examiner argued that Adams discloses the pump as being the final portion of the control loop and, therefore, that this variable speed pump is downstream of the pressure regulator of the control system. *See,* Office Action, page 6. Further, the Examiner argued that Rothenberger discloses a valve in addition to a pressure regulator, and cited Fig. 1 of Rothenberger in support of this position. In addition, the Examiner argued that Adams teaches that valve (12) is a component in addition to a pressure regulator (11), and cited Fig. 3 of Adams in support of this position. *See,* Office Action, page 7.

Appellants respectfully submit that, in fact, Rothenberger *does not* disclose a valve in addition to a pressure regulator. Rothenberger teaches an actuating device that includes electromotive gas valve 4 arranged in the gas feed line, and an electric servomotor as an actuator. *See*, Rothenberger, col. 6, lines 55-63. Further, Adams does not disclose a valve or a pump in addition to a pressure regulator. Fig. 3 of Adams teaches a self operating regulator (11) that includes a *body (12)* that comprises a fluid inlet, a fluid outlet and a flow passage connecting the inlet and outlet. *See,* Adams, col. 6, lines 36-40.

Appellants respecfully submit that Adams teaches the pressure regulator to be a control system that combines a process sensor, a controller and a *valve* into a single unit. *See,* Adams, col. 1, lines 31-33. Further, Adams teaches that it is well known in many situations to which pressure regulators could be applied, control valves are used ***instead***. *See,* Adams, col. 3, lines 48-49.

The present invention provides for enhancing performance of a gas burner by increasing primary air entrainment of the gas flow received from the gas feed line. In particular, the primary air entrainment is increased via increasing the pressure of the gas flow by a pump that is disposed downstream of the pressure regulator. As can be seen, Rothenberger and Adams, even in combination do not teach such an arrangement.

Modification proposed by Examiner would replace the pressure regulator of Rothenberger with a pump.

Following the alternative teachings of Adams (i.e., that some regulator could be replaced with a pump), the modification proposed by the Examiner would effectively *replace* the pressure regulator of Rothenberger with a pump. Appellants first point out that such replacement would result in a system with a pump and no upstream regulator, while both are required by the current claims.

Appellants further submit that such pressure regulators are well known and used for pressure control and to maintain a desired, ***reduced outlet pressure*** in fluid distribution applications and the process industries. *See*, Adams, col. 1, lines 32-40. Therefore, even in combination, Rothenberger and Adams do not teach increase in pressure of the gas flow downstream of the pressure regulator. Thus, the references cannot support a *prima facie* case of obviousness.

For all of the above reasons, Appellants respectfully request that the Panel instruct the Examiner to withdraw the outstanding rejections and allow the pending claims.

Respectfully submitted,

Date: 6/19/2006

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